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| <p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue Denver, CO 80203</p> | <p>FILED IN THE SUPREME COURT</p> <p>JUN - 3 2008</p> <p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p> |
| <p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007)</p> <p>Appeal from the Ballot Title Setting Board</p> | <p>▲ COURT USE ONLY ▲</p> |
| <p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008, #93 ("SAFE WORKPLACE")</p> <p>JOSEPH BLAKE, OBJECTOR,</p> <p>Petitioner,</p> <p>v.</p> <p>ERNEST L. DURAN, JR. AND BRADLEY JOHNSON, PROponents, AND WILLIAM A. HOBBS, DANIEL L. CARTIN AND DANIEL DOMENICO, TITLE BOARD,</p> <p>RESPONDENTS.</p> | <p>Case No.: 08SA180</p> |
| <p>JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, DEPUTY ATTORNEY GENERAL * 1525 Sherman Street, 7th Floor Denver, CO 80203</p> <p>Registration Number: *Counsel of Record</p> | |
| <p>OPENING BRIEF OF TITLE BOARD</p> | |

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William A. Hobbs, Daniel L. Cartin and Daniel Domenico, in their capacities as members of the Title Board (hereinafter "Board"), hereby submit their Opening Brief.

STATEMENT OF THE ISSUES

The Board adopts the statement of issues set forth in the Objector's Petition for Review.

STATEMENT OF THE CASE

On April 25, 2008 the proponents filed Proposed Initiative #93 (#93) with the Secretary of State. The Board held a hearing to set the titles on May 7, 2008. The Board concluded that #93 had a single subject and set a title.

On May 14, 2008, Joseph Blake, the Objector, filed a motion for rehearing. He alleged that #93 contained multiple subjects and that the titles were misleading, incomplete, confusing and inaccurate.

On May 21, 2008, the board denied the motion for rehearing. The Objector filed this appeal.

STATEMENT OF THE FACTS

#93, if enacted, would add section 124 to title 8, article 2 of the Colorado Revised Statutes. This measure would require all employers to provide "a safe

and healthy workplace for their employees.” The measure also provides that an employer who fails to comply with the obligation to provide a safe workplace would be liable and that any liability would be in addition to rights under the Worker’ Compensation Act

SUMMARY OF THE ARGUMENT

#93 contains only one subject: providing a safe workplace for employees.

All provisions of the measure directly relate to this subject.

The titles set by the Board are fair, clear and accurate.

ARGUMENT

I. #93 contains one subject: providing a safe workplace for employees.

The Objector contends that the Board should not have set titles because #93 contains more than one subject, thereby violating Colo. Const. art. V, § 1(5.5), which states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the

measure shall not be submitted to the people for adoption or rejection at the polls.

A proposed initiative violates the single subject rule if it “relate[s] to more than one subject and ... [has] at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2005-2006* #55, 138 P.3d 273, 277 (Colo. 2002)(Colo. 2006) (#55) A proposed initiative that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000* #25, 974 P.2d 458, 463 (Colo. 1999). The single subject rule both prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. #55, 138 P.3d at 277 *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-02* #43, 46 P.3d 438, 442 (Colo. 2002)(#43).

The Court will not address the merits of a proposed measure, interpret it or construe its future legal effects. #43, 46 P.3d at 443. . *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000* #258(A), 4 P.3d 1094, 1097-98 (Colo. 2000). The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the

measure violates the single subject rule. *In re Title, Ballot Title and Submission Clause for 2001-2002 #21 and #22*, 44 P.3d, 213, 216 (Colo. 2002). The single subject rule must be liberally construed to avoid unduly restricting the right of initiative. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74*, 962 P.2d 927, 929 (Colo. 1998). Sections of a measure that include “implementation or enforcement details directly tied to the single subject will not, in and of themselves, constitute a single subject.” *Title, Ballot Title and Submission Clause, and Summary for 2005-2006 #73*, 135 P.3d 736, 739 (Colo. 2006).

The measure has only one subject: providing a safe workplace for employees. Each section relates to this subject. The first two sections state that an employer must provide a safe workplace for its employees. The third section states that an employee will have a cause of action against an employer if the employer violates this duty and that any damages collected will be in addition to awards under the Workers’ Compensation Act. However, any awards under the Act will be deducted from damages awarded in a civil action. The fourth section defines the words “employer” and “employee”.

Objector contends that the measure has two separate subjects in addition to providing a safe workplace. First, he contends that the measure provides a new civil remedy. The inclusion of penalties and enforcement procedures does not create a different subject. “[N]either the addition of civil penalties nor the enforcement of those penalties through private rights of action constitute separate subjects.” *Blake v. King*, 2008 WL 2167847 (Colo.) (May 23, 2008) *3.

Objector next asserts that the measure significantly alters the exclusivity of the Workers’ Compensation Act. This argument constitutes speculation about the impact of the measure on existing law. The Board cannot engage in such speculation. As this Court stated in *In re Title Ballot Title and Submission Clause for 2007-2008 #62* 2008 WL 2081571 (Colo.) (May 16, 2008):

In short, Petitioner thinly parses the language of the measure in an attempt to create separate and distinct subjects. In order to do this, Petitioner speculates about the effects of the measure, postulating that if the measure is interpreted in a way that fits his conclusions, then the measure will have multiple effects. This approach is erroneous.

Id. at *6. Mere speculation about the legal effects of a measure is an insufficient ground upon which to find that the measure contains more than one subject. *Id.*

II. The Titles Are Fair, Clear and Accurate

Petitioner contends that titles are misleading because they do not disclose the impact that the measure will have on existing provisions of the Workers' Compensation statute. The Board does not have a duty to state the impact that a proposed initiative will have on existing constitutional or statutory provisions. "The Board's duty is merely to summarize the central features of the initiated measure in the title, ballot title and submission clause, and summary in a clear and concise manner." *In re Title, Ballot Title and Submission Clause and Summary for a Petition on School Finance*, 875 P.2d 207, 211 (Colo. 1994).

The titles set for #93 are consistent with titles already approved by the Court for similar measures. *In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment*, 830 P.2d 1031 (Colo. 1992). The measure stated: "Anyone who, in the course of business, knowingly maintains an unsafe work environment shall not be immune from suit for a resulting injury or death by a worker and his or her survivors for any and all damages." The titles set by the Board incorporated the exact wording of the measure. Like #93, the measure would have imposed remedies in addition to those imposed by the Workers' Compensation Law. The titles did not mention the potential impact of the measure on the Workers' Compensation Law. The Court found that the titles

were sufficient because they closely mimicked the language of the initiative. *Id.* at 1034.

Similar language was used in a “safe workplace” proposal in 1995. *In re Title, Ballot Title and Submission Clause, and Summary for Proposed Constitutional Initiated Constitutional Amendment “Concerning Suits against Nongovernmental Employers Who Knowingly and Recklessly Maintain an Unsafe Work Environment,”* 898 P.2d 1071 (Colo. 1995). The proposal stated:

Be it enacted by the people of the state of Colorado that there be an amendment to the Colorado constitution to provide that any employer who knowingly or recklessly maintains an unsafe work environment shall not be immune from suit for a resulting injury or death by a worker and his or her survivors for any and all damages and losses, to be reduced by benefits paid under the “Workers’ Compensation Act of Colorado” for such injury or death. For purposes of this amendment the government shall not be considered an employer.

The title stated:

An amendment to the Colorado Constitution concerning suits against nongovernmental employers who knowingly or recklessly maintain an unsafe work environment, and in connection therewith, providing that such an employer shall not be immune from suit by a worker who is injured or dies as a result of that unsafe work environment and requiring that damages and losses recovered in such suits

be reduced by benefits paid under the “Workers’ Compensation Act of Colorado.


The Court approved the title, noting that the “language used by the Board properly repeats the operative language of the proposed amendment and expresses the true intent and meaning of the measure.” *Id.* at 1074.

Like the titles set for these two measures, the titles for #93 accurately mirror the content of the measure.

CONCLUSION

For the above-state reasons, the Court must affirm the Board’s action.

JOHN W. SUTHERS
Attorney General

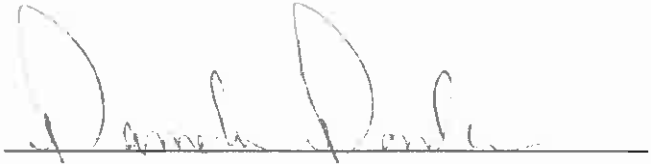

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Deputy Attorney General
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Attorneys for Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same overnight by DHL at Denver, Colorado, this 3rd day of June 2008 addressed as follows:

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A handwritten signature in black ink, appearing to read "Michael J. Belo", is written over a horizontal line.

*Proposed Initiative
93
Final Text*

Be it Enacted by the People of the State of Colorado:

Part 1 of article 2 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

8-2-124. Safe workplace. (1) IT IS THE POLICY OF THIS STATE THAT EVERY EMPLOYEE SHOULD WORK IN A SAFE AND HEALTHY WORK ENVIRONMENT.

(2) EVERY EMPLOYER IN THIS STATE SHALL PROVIDE A SAFE AND HEALTHY WORKPLACE FOR ITS EMPLOYEES.

(3) FAILURE OF AN EMPLOYER TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION SHALL BE ACTIONABLE BY AN INJURED EMPLOYEE IN DISTRICT COURT IN ADDITION TO ANY RIGHTS THE EMPLOYEE MAY HAVE UNDER THE WORKERS' COMPENSATION ACT OF COLORADO, ARTICLES 40 TO 47 OF THIS TITLE. THE INJURED EMPLOYEE SHALL HAVE A RIGHT TO A JURY TRIAL ON ALL ISSUES OF FACT, IF DEMANDED IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE. THE COURT OR JURY MAY AWARD THE INJURED EMPLOYEE COMPENSATORY AND EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR PAST AND FUTURE PECUNIARY LOSSES, PAIN AND SUFFERING, EMOTIONAL DISTRESS, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES, PROVIDED THAT THE EMPLOYEE SHALL NOT BE ENTITLED TO A DOUBLE RECOVERY FOR THE SAME LOSSES FOR WHICH THE EMPLOYEE HAS ALREADY BEEN COMPENSATED UNDER THE WORKERS' COMPENSATION ACT.

(4) "EMPLOYER" AND "EMPLOYEE" SHALL HAVE THE MEANINGS SET FORTH IN SECTION 8-4-101, EXCEPT THAT THIS SECTION SHALL APPLY ONLY TO EMPLOYERS THAT REGULARLY EMPLOY TEN OR MORE EMPLOYEES IN THE STATE OF COLORADO.

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ELECTIONS
SECRETARY OF STATE

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K.M.*

Ballot Title Setting Board

Proposed Initiative 2007-2008 #93¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado Revised Statutes concerning a safe workplace for employees, and, in connection therewith, requiring employers to provide safe and healthy workplaces for their employees; restricting such requirement to employers regularly employing ten or more employees in the state; and enabling employees who are injured because of an employer's violation of this requirement to file suit in district court, with the right to a jury trial, to recover compensatory and exemplary damages, actual past or future pecuniary losses, and noneconomic losses including pain and suffering, emotional distress, inconvenience, mental anguish, and loss of enjoyment of life, but prohibiting injured employees from recovering any damages for which the employee already received compensation pursuant to the "Workers' Compensation Act of Colorado".

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado Revised Statutes concerning a safe workplace for employees, and, in connection therewith, requiring employers to provide safe and healthy workplaces for their employees; restricting such requirement to employers regularly employing ten or more employees in the state; and enabling employees who are injured because of an employer's violation of this requirement to file suit in district court, with the right to a jury trial, to recover compensatory and exemplary damages, actual past or future pecuniary losses, and noneconomic losses including pain and suffering, emotional distress, inconvenience, mental anguish, and loss of enjoyment of life, but prohibiting injured employees from recovering any damages for which the employee already received compensation pursuant to the "Workers' Compensation Act of Colorado"?

Hearing May 7, 2008:

Single subject approved; staff draft adopted; titles set.

Hearing adjourned 10:55 a.m.

Hearing May 21, 2008:

Motion for Rehearing denied.

Hearing adjourned 12:25 p.m.

¹ Unofficially captioned "Safe Workplace" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.